



## ***Texas Department of Insurance***

### ***Division of Workers' Comp***

Medical Fee Dispute Resolution, MS-48  
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645  
518-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## ***MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION***

### ***GENERAL INFORMATION***

#### **Requestor Name and Address**

VISTA MEDICAL CENTER HOSPITAL  
4301 VISTA ROAD  
PASADENA TEXAS 77504

#### **Respondent Name**

INSURANCE CO OF THE STATE OF PA

#### **Carrier's Austin Representative Box**

Box Number 19

#### **MFDR Tracking Number**

M4-06-5999

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary:** "Carrier may reimburse at a "per diem" rate for the hospital services if the total audited charges for the admission are below \$40,000, after the Carrier audits the bill pursuant to the applicable rules. However, if the total audited charges for the entire admission are above \$40,000, the Carrier shall reimburse using the Stop-Loss Methodology in accordance with the plain language of the rule contained in § 134.401(c)(6)(A)(iii). This rule does not require a hospital to prove that services provided during the admission were unusually extensive or unusually costly to trigger the application of the Stop Loss Methodology. It is presumed that the services provided were unusually extensive or unusually costly when the \$40,000 stop-loss threshold is reached."

**Amount in Dispute:** \$64,603.02

### ***RESPONDENT'S POSITION SUMMARY***

**Respondent's Position Summary Dated June 1, 2006:** "This is a medical fee dispute arising from the inpatient hospital surgical admission, dates of service 10/22/2005 to 10/24/2005...The Requestor asserts it is entitled to reimbursement in the amount of \$76,191.15, which is 75% of the total charges. Requestor has not shown entitlement to this alternative, exceptional method of calculating reimbursement and has not otherwise properly calculated the audited charges"

**Respondent's Position Summary Dated September 9, 2011:** "Respondent submits the Respondent's Post-Appeal Supplemental Response as a response to and an incorporation of the Third Court of Appeals Mandate in Cause No. 03-07-00682-CV...Based upon Respondent's initial and all supplemental responses, and in accordance with the Division's obligation to adjudicate the payment, in accordance with the Labor Code and Division rules, Requestor has failed to sustain its burden of proving entitlement to the stop-loss exception. The Division must conclude that payment should be awarded in accordance with the general per diem payment in accordance with 28 Tex. Admin. Code § 134.401 (repealed)..."

**Both Responses Submitted by:** Flahive, Ogden & Latson, 505 West 12<sup>th</sup> Street, Austin, Texas 78701

## SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
October 22, 2005, through October 24, 2005	Inpatient Hospital Services	\$64,603.02	\$0.00

## FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes
2. 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997 sets out the reimbursement guidelines
3. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated December 15, 2005

- 1 - (W1) Workers Compensation State Fee Schedule Adjustment
- 2 – (42) Charges exceed our fee schedule or maximum allowable amount.

### Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

### Findings

Division rule at 28 Texas Administrative Code §133.307(g)(3)(C)(iv), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to send additional documentation relevant to the fee dispute including a statement of the disputed issue(s) that shall include "how the submitted documentation supports the requestor position for each disputed fee issue." This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 TexReg 6264. The Austin's Third Court of Appeals November 13, 2008 opinion in *Tex. Mut. Ins. Co. v. Vista Cmty. Med. Ctr., LLP*, 275 S.W.3d 538, 550 (Tex. App. - Austin 2008, *pet. denied*) addressed a challenge to the validity and interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." On August 10th of 2011, both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission or response as applicable. The Division received supplemental information from the respondent on September 12th of 2011. The respondent provided a copy of the supplemental information to the requestor at the time that it was submitted to the Division's MFDR section as per 28 Texas Administrative Code §133.307. The Division notes that the requestor in this medical fee dispute supplemented its original filing, or that it timely responded to the additional information that was provided by the respondent. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment.

28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the Stop-Loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) delineates those factors

which establish eligibility for payment under the Stop-loss exception. One of the factors is §134.401(c)(6)(A)(i) which states "...to be eligible for stop-loss payment, the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, under (A)(v) of that same section "...Audited charges are those which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier on December 15, 2005 finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v), therefore the audited charges equal \$101,588.02. The Division concludes that the total audited charges exceed \$40,000.

28 Texas Administrative Code §134.401(c)(6) goes on address other factors by stating "...Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered..." Additionally, §134.401(c)(6)(A)(ii) states that "This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission." The requestor, in its medical fee dispute resolution position statement contends, in pertinent part "...if the total audited charges for the entire admission are above \$40,000, the Carrier shall reimburse using the Stop-Loss Methodology in accordance with the plain language of the rule contained in § 134.401(c)(6)(A)(iii). **This rule does not require a hospital to prove that services provided during the admission were unusually extensive or unusually costly. It is presumed that the services provided were unusually extensive or unusually costly when the \$40,000 stop-loss threshold is reached** [emphasis added]" On the contrary, the Division cites the Austin Third Court of Appeals November 13, 2008 opinion in *Tex. Mut. Ins. Co. v. Vista Cmty. Med. Ctr., LLP*, 275 S.W.3d 538, 550 (Tex. App. - Austin 2008, pet. denied) in which the court concluded "We reverse the Trial court's judgment that the Stop-Loss Exception applies to any admission in which audited charges exceed \$40,000, and we render judgment that, to establish eligibility for reimbursement under the Stop-Loss methodology, a provider must demonstrate that audited charges exceed \$40,000 and that the services provided were unusually costly and unusually extensive so as to allow application of the exception..." . Therefore, whether an admission is unusually costly and unusually extensive may not be presumed, but rather must be demonstrated by the requestor. The requestor offers no explanation, or discussion on how the services provided may be considered unusually costly. Similarly, the requestor offers no explanation, or discussion on how the services provided may be considered unusually extensive. The Division concludes that the requestor failed to demonstrate that the stop-loss method of payment applies to the services in dispute.

For the reason stated above, the services in dispute, in this case are not eligible for the stop-loss method of reimbursement. Consequently, 28 TAC §134.401(c)(1) applies. Rule §134.401(c)(3)(ii) states that "(ii) The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission... (iii) If applicable, ICU/CCU days are subtracted from the total LOS and reimbursed the ICU/CCU per diem rate for those specific days of treatment in lieu of the assigned medical/surgical per diem rate... (iv)The Workers' Compensation Reimbursement Amount (WCRA) is the total amount of reimbursement to be made for that particular admission." Furthermore, 28 Texas Administrative Code §134.401(c)(4) states that "...All items listed in this paragraph shall be reimbursed in addition to the normal per diem based reimbursement system in accordance with the guidelines established by this section. Additional reimbursements apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section." Review of the submitted documentation finds that the services provided were 1 ICU day, 1 surgical day, and revenue code 278 "IMPLANTS". The ICU day is allowed at \$1,560.00, the surgical day is allowed at \$1,118, which results in an allowable amount of \$2,236.00. The additional payment for revenue code 278 is calculated under (c)(4)(A) which states, in pertinent part "...the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278)..." Review of the implant invoices finds that the cost for the items billed under revenue code 278 was \$8,100.00. The additional allowable for the implantables billed under revenue code 278 is \$8,100.00 (cost) plus \$810.00 (10% of cost), which is \$8,910.00. Therefore, the total allowable for the services in dispute is \$11,588.00. Review of the submitted documentation finds that the respondent issued payment in the amount of \$11,588.00 for these services. No additional amount is recommended.

### **Conclusion**

The requestor in this case demonstrated that the audited charges exceed \$40,000, failed to demonstrate that the disputed inpatient hospital admission involved unusually costly services, and failed to demonstrate that the admission involved unusually extensive services. The requestor failed to support that the Stop-Loss reimbursement methodology applies; therefore the per diem reimbursement method applies. The total allowable of \$11,588.00 was paid by the respondent, no additional amount is recommended.

## **ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the disputed services.

### **Authorized Signature**

_____ Signature	_____ Medical Fee Dispute Resolution Manager	_____ September 26, 2011 Date
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### ***YOUR RIGHT TO REQUEST AN APPEAL***

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a certificate of service demonstrating that the request has been sent to the other party.**

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**